



Inquiry Committee  
concerning  
the Hon. Lori Douglas

Comité d'enquête  
au sujet de  
l'hon. Lori Douglas

**Transcript  
of the hearing of  
26 June 2012**

**Procès-verbal  
de l'audition du  
26 juin 2012**

**(v. originale en anglais)**

IN THE MATTER OF AN INQUIRY COMMITTEE CONSTITUTED  
PURSUANT TO SECTION 63 OF THE JUDGES ACT R.S.C.  
1985, C. J-1 AS AMENDED INTO THE CONDUCT OF THE  
HONOURABLE ASSOCIATE CHIEF JUSTICE LORI DOUGLAS OF  
THE COURT OF QUEEN'S BENCH OF MANITOBA

\*\*\*\*\*

HELD BEFORE THE HONOURABLE CATHERINE FRASER  
(CHAIRPERSON),  
THE HONOURABLE DEREK GREEN,  
THE HONOURABLE JACQUELINE MATHESON,  
BARRY ADAMS, AND MARIE-CLAUDE LANDRY  
at Court of Queen's Bench  
373 Broadway, 4th Floor, Winnipeg, Manitoba  
on Tuesday, June 26, 2012 at 10:30 a.m.

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APPEARANCES:

Guy Pratte, Q.C.	Independent counsel appointed pursuant to the Complaints Procedure
Sheila Block Molly Reynolds	For The Honourable Assistant Chief Justice Lori Douglas
Rocco Galati Dushani Sribavan	For Alex Chapman
George Macintosh, Q.C.	For the Inquiry Committee

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1       --- Upon commencing on Tuesday, June 26, 2012 at  
2       10:30 a.m.

3                       CHAIRPERSON: Good morning,  
4       counsel, ladies and gentlemen. First let me  
5       begin by thanking counsel for having given us the  
6       additional time that we required to carefully  
7       consider the difficult issue with respect to the  
8       application that has been made by Mr. Chapman.

9                       Let me begin by saying that our  
10      reasons for the decision that I'm about to  
11      announce will be released as soon as possible.  
12      We have concluded that in the exceptional  
13      circumstances here, Mr. Chapman will have certain  
14      limited rights of participation in this inquiry  
15      as follows: His counsel, Mr. Galati, will be  
16      entitled to participate in the questioning of  
17      Mr. Chapman and in those who have been subpoenaed  
18      as of now, Mr. King, Mr. Histed, and Associate  
19      Chief Justice Douglas.

20                      The sequencing of that  
21      questioning will be as determined by all counsel  
22      in consultation with independent counsel, and  
23      failing agreement, as determined by independent  
24      counsel.

25                      Mr. Chapman will have the right

1 to make final submissions. Mr. Chapman's  
2 participation is confined in all respects,  
3 including final submissions, to allegation 1.  
4 Mr. Chapman's participation rights as described  
5 above are subject to the overriding discretion of  
6 this committee.

7 Funding will be limited to one  
8 lawyer for those activities only, plus reasonable  
9 preparation for them. Fees must be in accordance  
10 with the rates prescribed by the Department of  
11 Justice for outside counsel. The administrative  
12 arrangements are to be established by the  
13 Executive Director of the Canadian Judicial  
14 Council.

15 A number of comments were made  
16 during argument yesterday concerning the role of  
17 independent counsel and how the position of  
18 independent counsel could or should function in  
19 the context of the specific allegations with  
20 which this inquiry is dealing. We believe that  
21 this ruling in the rare and exceptional  
22 circumstances of this case is consistent with the  
23 institutional role of independent counsel.

24 Accordingly, the ruling in this  
25 matter should not be taken as an expression of

1     any lack of confidence in the position of  
2     independent counsel in the inquiry system  
3     presently operated under the Judges Act. In  
4     fact, the position of independent counsel plays a  
5     special and vital, indeed, essential role in the  
6     inquiry process and in this inquiry in  
7     particular.

8                     That, therefore, is our decision  
9     with respect to the application for standing.

10                    And the next item on the agenda  
11     would, I believe, then be the scheduling of the  
12     balance of the day and balance of the time we  
13     have at this time and when we might resume in  
14     July. And I mention that because I'm aware of  
15     the fact, Mr. Galati, that you had indicated that  
16     for your client to receive an opportunity to have  
17     any kinds of rights of participation, that you  
18     would want the inquiry to be delayed by a week in  
19     July, and I should simply begin by saying that I  
20     don't think that that's going to be possible. We  
21     have those two weeks set aside and so we really  
22     are going to have to ask you to accommodate those  
23     dates.

24                    MR. GALATI: I appreciate that,  
25     Chief Justice. I can advise everyone that the --

1 I'm in your hands, but for the July 17, 18  
2 sitting I do have a full day constitutional  
3 matter in the Federal Court that was set months  
4 ago, so I'll be sending my associate for those  
5 two days if they apply to Mr. Chapman. I cannot  
6 -- I cannot get out of that engagement.

7                   However, for the balance, I will  
8 work with the committee's order and I appreciate  
9 it. That is not the major reason I asked for the  
10 extra week. I just want to make clear that three  
11 weeks is a very short time in a sole  
12 practitioner's life and office to prepare a case,  
13 and I haven't seen disclosure on that yet and any  
14 witness list.

15                   So, I mean, I don't want the  
16 panel to think that that's the main reason I was  
17 asking for the extra week. It's because it's  
18 very short. It's three weeks.

19                   CHAIRPERSON: No, I think we  
20 appreciate very much that it's a very short time  
21 frame, but nevertheless, in view of the fact that  
22 time has been committed by everyone, we really  
23 are going to have to ask you to accommodate that  
24 schedule, and hopefully you can work with  
25 independent counsel in terms of the timing of

1       leading of the evidence and so on and sort out  
2       some of these administrative details.

3                       MR. GALATI:   Very good.   Thank  
4       you.

5                       CHAIRPERSON:   Thank you.   I think  
6       that that would then take us to today, the next  
7       item on the agenda, and I don't know whether we'd  
8       like to have counsel discuss how we go -- how we  
9       deal with things after the next item, but the  
10      next item would presumably be the matter we left  
11      with you to discuss last night, which was the  
12      redaction of any materials from the affidavit,  
13      which we had invited Ms. Block to consider.

14                      And may I just say that's, I  
15      know, an issue on the table.   Could I also then  
16      perhaps -- just jumping ahead a moment for the  
17      day in terms of how it's going to unfold -- we  
18      were hoping that we could then proceed after we  
19      resolved that issue with the opening statements  
20      from counsel.   Is that possible to proceed in  
21      accordance with your original plans on that  
22      front?

23                      MR. PRATTE:   It is, Chief  
24      Justice.   I'm not sure how long Ms. Block will  
25      be.   I expect I'll be about 45 minutes, and I



1       don't know how the schedule will work out, but  
2       how should I say this, without a smile or prayer,  
3       there is a flight at 4:00 back to Ottawa, I  
4       suppose. But I think both Ms. Block and I are  
5       prepared to go with the openings.

6                       CHAIRPERSON: All right. The  
7       other thing before you catch that plane at 4:00,  
8       I wondered whether there was any possibility of  
9       your proceeding to lead evidence with respect to  
10      allegations 2, 3 or 4?

11                     MR. PRATTE: No, Chief Justice,  
12      with respect. We have worked on the schedule in  
13      the order, and in our respectful submission, it's  
14      difficult, and we haven't called a witness. We  
15      had three witnesses scheduled this week and we  
16      thought that logically, although there is a  
17      distinction as your ruling points out between  
18      allegations 1 and the other, there's -- still the  
19      whole factual backdrop is necessary.

20                     I appreciate your question, Chief  
21      Justice, but I don't think that would be feasible  
22      unfortunately.

23                     CHAIRPERSON: All right. Well,  
24      that's fair enough. I think we were in your  
25      hands, Mr. Pratte, on that, so I assume, Ms.

1       Block, you have no concerns about that either?

2                       MS. BLOCK:  No.  Thank you.

3                       CHAIRPERSON:  All right, thank  
4       you.  So for the day today, then, we have two  
5       items to deal with, and the first is the issue of  
6       the affidavit -- Chapman affidavit and then we'll  
7       proceed from there to opening statements.  Thank  
8       you.  Just one moment.  I'm just going to ask if  
9       you'll give me a moment.

10                      I knew there was -- there was one  
11       thing that I did forget and I've now been  
12       reminded of by my colleagues, and that is that  
13       there were the binders of materials that were  
14       going to be presented, and I'm not sure where  
15       that stands.  We do -- are those available at  
16       this time and will they be given to us prior to  
17       your making the opening statements?

18                      MR. PRATTE:  They can, Chief  
19       Justice.  I think subject to -- there is no  
20       reason that they can't be filed.  I think there  
21       is basically an agreement between counsel on  
22       virtually all the documents as to their  
23       authenticity, except perhaps for a group of  
24       documents that Ms. Reynolds and Ms. Crain have  
25       been discussing.  But I don't think there is any

1     problem in the panel getting those books before  
2     the openings this morning, as you wish, so they  
3     can go in and be filed. I think there is no  
4     problem with that. Yeah. So they should all be  
5     received during the evidence, Chief Justice.

6                     There may be some whose  
7     admissibility will be challenged, but they may  
8     not go in, but to have them -- because there may  
9     be some of them whose authenticity is being  
10    challenged, but for the purposes of constituting  
11    your record, I submit that they could all be  
12    received, and then you'll make rulings, if ever  
13    that arises during the course of the hearing,  
14    otherwise they'll stay into the record, is my  
15    recommendation. I don't intend to refer to any  
16    of those materials for the opening, if you were  
17    wondering.

18                    THE CHAIR:     Okay. Except I  
19    had assumed that these materials had all been  
20    vetted by Ms. Block and approved by her for  
21    inclusion in the materials to be presented before  
22    us. Is there some issue of the admissibility  
23    and/or need to redact any of those?

24                    MR. PRATTE: We have agreed on  
25    all the documents, Chief Justice, but there may

1       be -- and I don't want to say any more about  
2       that. But there may be some witnesses, so --  
3       whereas we have agreed as between counsel there  
4       may be particularly one witness that might take  
5       issue with the authenticity or whether a document  
6       has been tampered with. So that's why I'm being,  
7       let's say, circumspect about this, but I don't  
8       think there's any problem in your receiving them  
9       in evidence now and if need be, if for some  
10      reason you thought that the document's  
11      authenticity was challenged, we could pull it out  
12      on the file.

13                   THE CHAIR:     Thank you. That  
14      makes it very clear. Just so that we don't  
15      forget, would it be a good idea to simply have  
16      them introduced at this time as Exhibit 3?

17                   MR. PRATTE:    Yes. And they're  
18      all tabbed. So I don't think there will -- we'll  
19      be referring to Exhibit 3, Tab 72.

20                   THE CHAIR:     72 tabs?

21                   MR. PRATTE:    No. Actually, there  
22      are more than that. I was giving you an example  
23      that, for the record, would be clear. This was  
24      wishful thinking, Chief Justice, but there are  
25      more than that. 164, but just so you -- there

1 are no photographs in any of this stuff.

2 THE CHAIR: All right, thank  
3 you. So then the volumes of material in question  
4 will be admitted as Exhibit 3, will be marked as  
5 Exhibit 3.

6 MR. PRATTE: Indeed. Thank you.

7 THE CHAIR: Thank you.

8 EXHIBIT P-3:

9 BINDER OF MATERIALS

10 THE CHAIR: Now, we're then  
11 ready to deal with the issue of the affidavit  
12 that was filed in support of the request for  
13 standing/funding by Mr. Chapman. Ms. Block.

14 MS. BLOCK: Thank you, Chief  
15 Justice, and I appreciate having had your ruling  
16 on the timing because the issue for me, really,  
17 is the timing because the mischief I'm concerned  
18 about is the narrative that is contained in the  
19 affidavit on the merits. It obviously will be  
20 part of what you will hear when Mr. Chapman is in  
21 the box. But when he's in the box, he will be  
22 able to be challenged on it.

23 What concerned me, as I reflected  
24 on it last night, and I appreciate you're giving  
25 me the time to do that, was that if this goes on

1 file on the CJC website now in respect of certain  
2 paragraphs, the merits paragraphs, if I can put  
3 it that way, and the merit exhibit, which I'll  
4 come to -- if it goes on the website now and  
5 there is two weeks -- or I can't remember how  
6 many weeks we have before -- two or three weeks  
7 before the 16th, then the challenges will not be  
8 contemporaneous.

9                   And in view of the history of the  
10 way this has been covered and perhaps been seeing  
11 some of the coverage, I would ask that it be  
12 delayed until Mr. Chapman is in the box, and then  
13 the whole thing can go in.

14                   The issue that I have was in  
15 relation to paragraphs 12 to 55 and Exhibit G at  
16 this stage, which is another account of those  
17 same -- those same untested accounts of the  
18 events leading up to the CJC complaint.

19                   And so the rest of the affidavit  
20 and the other exhibits could go in at this point,  
21 but I would ask that that be reserved until the  
22 evidence actually starts with Mr. Chapman, and  
23 then contemporaneously there will be whatever  
24 challenges there are to the materials that's in  
25 there. So that was my concern, and I appreciate

1       you giving me the opportunity to make that point.

2                       THE CHAIR:       Thank you very  
3       much, Ms. Block.   Mr. Pratte.

4                       MR. PRATTE:   With respect, Chief  
5       Justice, I disagree with Ms. Block, and I think  
6       the principle you've outlined is to have these  
7       proceedings as open as possible.   This record, as  
8       I said yesterday, was not objected to, is related  
9       to the application for standing.   It does not  
10      constitute evidence on the merits, but was  
11      evidence for the application on standing which  
12      you've granted in part or on conditions.

13                      And the concern that Ms. Block  
14      raises, it would not have been impossible for  
15      Mr. Chapman to have testified and not finished  
16      his testimony until tomorrow afternoon before he  
17      was cross-examined by Ms. Block.   The transcript  
18      would -- his evidence untested by her would have  
19      been on the website or heard in public, and we  
20      would have adjourned for another two weeks.   So  
21      we have to have some confidence that the public  
22      will realize that that was an affidavit and in  
23      the context of a standing application, which was  
24      partially successful, and it was not objected to  
25      at the time that it was referred to before you,

1       and that's all it is.

2                       But I have, as independent  
3       counsel, been, as you know, very careful to  
4       ensure that we did not allow evidence that was  
5       scandalous or whatever to stand or to be unfairly  
6       publicized, but there's also a countervailing  
7       value that, in my respectful submission, should  
8       govern your decision and allow this material to  
9       be filed on the public record now for the reasons  
10      I've stated, Chief Justice.

11                    THE CHAIR:       Thank you,  
12      Mr. Pratte.   Mr. Galati.

13                    MR. GALATI:   Thank you, Chief  
14      Justice.   I won't take too much of your time.   I  
15      find myself in a strange position of having a  
16      position that falls somewhere in the middle  
17      between Ms. Block and Mr. Pratte with respect to  
18      my client.

19                    The concern about the facts not  
20      proven, while a valid one, is a concern that will  
21      be running through the entire evidentiary basis  
22      of the hearing.   Facts are not proven or  
23      disproven at this hearing until you come up with  
24      your final report and enunciate those findings of  
25      fact.



1                   So the concern that my friend  
2       Ms. Block has about the affidavit she could  
3       equally assert about viva voce evidence. Those  
4       facts while you're hearing the evidence are not  
5       proven either. And so I have a serious concern  
6       about what's being asked, but I think there is a  
7       slight unfocusing on what's being asked from the  
8       committee.

9                   And the way I see this is that  
10      what my friend Ms. Block really wants is a  
11      publication ban pending the commencement of the  
12      hearing of evidence. What's on the table right  
13      now is a redaction order. A redaction order by  
14      any other name is a Court sealing order. We  
15      oppose a sealing order. My client opposes a  
16      sealing order.

17                  And I agree with Mr. Pratte that  
18      the entirety of the affidavit, with one  
19      exception, should be made public on the CJC  
20      website, and this is simply an extension of your  
21      paper public record.

22                  If you want to accommodate  
23      Ms. Block's concern, you simply issue a  
24      publication ban on that material on the website  
25      to the media at large until such time as evidence

1       is commenced here at this inquiry. I think  
2       that's what she's really seeking. If you redact  
3       that part of the record which has been evidence  
4       under -- under oath by my client, it affects any  
5       future rights he may have to judicial review.  
6       The redaction goes up. He has to carry the  
7       burden of a -- of a sealing order. It's --  
8       that's -- that's really, in these circumstances,  
9       inappropriate.

10                       And so you'll notice yesterday  
11       that when I was making submissions, I mean, out  
12       of respect to the process, I did not read any of  
13       that evidence in the body of the affidavit on the  
14       record because I foresaw that this issue would  
15       arise. So out of respect to Ms. Block's client  
16       and to the committee, I simply referred the  
17       committee to the affidavit without reading it  
18       into the record; and, therefore, in a sense -- in  
19       a sense undermine her right to ask for this.

20                       However, the bottom line is that  
21       if the -- if the committee is going to give any  
22       weight to the concerns of Ms. Block's client that  
23       it should be through the issuance of a  
24       publication ban for the next three weeks until  
25       the hearing is commenced, but it should not be

1 through a sealing order, which is what she is  
2 seeking.

3 If you issue a sealing order or  
4 redaction, then to respect my client's rights to  
5 any rights of judicial review, the order should  
6 make it clear that it does not affect the use of  
7 that material on any judicial review and that  
8 it's not a sealing order that should follow up to  
9 the Federal Court.

10 I don't know if I'm making my  
11 submissions clear on behalf of my client with  
12 respect to the distinction between a sealing  
13 order and a publication ban and why he has a  
14 concern.

15 THE CHAIR: No, I think you've  
16 made your position very clear. You did say with  
17 one exception, and what's the exception to which  
18 you're referring?

19 MR. GALATI: I'm in agreement  
20 with Ms. Block that it would be appropriate for  
21 you at this time to redact Exhibit G, which I had  
22 there simply for the narrative on the standing  
23 application, which is, in a sense, disclosure  
24 being provided. If I'm -- if I'm correct, it's  
25 disclosure. I don't think a valid objection

1       could be made to redacting that disclosure memo  
2       because normally in any process disclosure is not  
3       part of the evidence before the Court hears it.

4                       So I don't have -- my client has  
5       no objection to that.

6                       MR. PRATTE: Chief Justice, in  
7       retrospect actually I think I wouldn't have an  
8       objection to removing because that would be the  
9       only statement of any witness that would become  
10      public, and it's not really germane actually to  
11      the standing application. I don't think any  
12      reference was made to it. It was to the  
13      affidavit.

14                      So I would agree with -- well,  
15      actually we'd have a chorus of three in agreement  
16      that that exhibit might be removed.

17                      MS. BLOCK: What -- if the -- if  
18      the paragraphs are going in, sorry, then the  
19      whole thing should go in. If it's all going in,  
20      it should all go in.

21                      But all I'm -- and all I'm asking  
22      for is in relation to timing. I am not looking  
23      to seal forever. I'm not looking for anything  
24      other than the timing issue, but if the timing  
25      issue is not accepted, then everything goes in.

1                   And we did object to the evidence  
2     on the merits in our written response, but my  
3     friend, I'm sure, has forgotten.

4                   But the other -- if you -- if you  
5     order that it -- that the whole thing goes in, I  
6     would ask that you do what you've done in respect  
7     of the website in relation to other matters  
8     you've put on, which is this is not evidence  
9     before us, or you've got some language like that  
10    that you've used in relation to other filings so  
11    that it is not misinterpreted as though these --  
12    this is the God's truth of what the events were.  
13    That will be something that this panel would be  
14    listening to between July 16th and the following  
15    week.

16                  THE CHAIR:       Is Exhibit G the  
17    only witness statement -- I haven't gone back --  
18    I've read all this, but I don't recall whether  
19    there's any other witness statements in here.

20                  MR. PRATTE:   No.   That's the only  
21    one, Chief Justice.   And independent counsel  
22    doesn't feel that strongly on that.   Mr. Chapman  
23    chooses to put his witness statement.   I guess  
24    it's his statement, not mine, but it is the only  
25    statement that's in that book or any statement.

1       We don't propose that any such statements would  
2       ever come into evidence. That was not their  
3       purpose.

4                       THE CHAIR:       Mr. Galati, maybe  
5       you might clarify your position on Exhibit G.  
6       You've put it on the basis that this is something  
7       that Ms. Block wants, but what she wants is an  
8       all-or-nothing addition to the exhibits. So let  
9       me ask the question very bluntly. Is this  
10      something that you're asking for on behalf of  
11      your client --

12                     MR. GALATI:    No.

13                     THE CHAIR:     -- or do you have  
14      any objections to this being released?

15                     MR. GALATI:    I have no objection  
16      to its release. I was -- I -- if it's an  
17      all-or-nothing, my position is that none of it  
18      should be redacted.

19                     THE CHAIR:     Does the panel  
20      have any questions to ask of any counsel? Then  
21      thank you so much, counsel, for your submissions  
22      on this matter, and we're going to adjourn at  
23      this time to consider it. Thank you.

24      --- Upon recessing at 11:00.

25      --- Upon resuming at 11:18 a.m.

1                   THE CHAIR: Counsel, again, thank  
2     you for giving us time to consider this matter.  
3     We have concluded that the subject affidavit and  
4     all exhibits should be posted on the public  
5     record. That posting should be accompanied by a  
6     notice that none of the facts contained therein  
7     have yet been proved. Thank you.

8                   That then takes us to the next  
9     matter on the agenda, which is, I believe, then,  
10    the opening statements from counsel. Thank you.

11                  MR. PRATTE: Thank you, Chief  
12    Justice, members of the committee. While we're  
13    now starting or about to start now in a couple of  
14    weeks the evidentiary phase of this matter, I  
15    want to address at the outset the process that  
16    has been followed thus far and that has led us --  
17    or led to the four allegations filed on May 18,  
18    2002 involving Associate Chief Justice Douglas as  
19    well as the role independent counsel has played  
20    and intends to play until the end of that  
21    process.

22                  I do so not only because of the  
23    public attention that this matter has attracted  
24    but because it's quite rare -- quite rare, as it  
25    was noted yesterday, that such proceedings occur.

1                   As I understand it, this is only  
2     the ninth public inquiry into the conduct of a  
3     federally-appointed judge. As a result --

4                   THE CHAIR: I'm wondering if that  
5     mic can be moved closer for you to speak into.

6                   MR. PRATTE: Let me try this.  
7     You're not hearing me?

8                   THE CHAIR: I think we are now  
9     much better. Thank you.

10                  MR. PRATTE: So I was saying,  
11     Chief Justice, that I wanted, by way of  
12     introduction before I outline the evidence, that  
13     in very summary form we expect to call in respect  
14     of each one of the allegations to make some  
15     remarks about the process that has led us to file  
16     the four allegations and the role independent  
17     counsel intends to play. Although much of it was  
18     said yesterday I will succinctly refer to this.

19                  So let me start by way of  
20     introduction to say a few very brief things on  
21     the process to set this hearing in context.

22                  One of the objects and raisons  
23     d'etre of the CJC is to improve the quality of  
24     service of superior courts in the words of  
25     Section 60(1) of the Judges Act, and for this



1     purpose it is given, that is the CJC, the power  
2     to investigate complaints and allegations  
3     referred to it, such as Mr. Chapman's.

4                     This is, of course, consistent  
5     with the very high standards expected of the  
6     members of the judiciary, and they are noted -- I  
7     won't read the excerpt, but, for example, in the  
8     Therrien case, which I'm sure we'll refer to at  
9     the end of these proceedings.

10                    Now on July 14, 2010, Mr. Chapman  
11     made a complaint to the Canadian Judicial Council  
12     about Associate Chief Justice Lori Douglas. I'll  
13     have more to say about his complaint a little bit  
14     later when I describe the evidence that  
15     independent counsel intends to lead in respect of  
16     that, allegation number 1 in particular, but we  
17     know that, in essence, his complaint was that Ms.  
18     Douglas and Mr. King, who were both partners of a  
19     law firm in 2003, allegedly, I stress that,  
20     sexually harassed him, among other things, by  
21     sending certain graphic pictures to him and  
22     have -- and leaving voicemails and sending  
23     e-mails in the course of two or three months  
24     between April and June of 2003.

25                    Now -- and then, of course, on

1       September 27th, complaint number 2 upon which we  
2       had your ruling last Saturday, I believe, it was  
3       received.

4                       It's important to understand the  
5       steps that were followed upon receipt of these  
6       complaints before it was ascertained that a  
7       public hearing in this case was warranted.

8                       First, the investigation process  
9       involved the assessment of these complaints by  
10      the co-chairperson of the Canadian Judicial  
11      Council Conduct Committee.

12                      Second, based on the powers given  
13      to him in that context the co-chairperson  
14      determined that a review panel composed of five  
15      judges from jurisdictions other than Manitoba  
16      should be constituted to determine if an inquiry  
17      committee should be established.

18                      And while a review panel does not  
19      hear evidence, that review panel decided to  
20      retain counsel in order -- in order to carry out  
21      certain inquiries for the purposes of assisting  
22      it in discharging its mandate as the review  
23      panel. And thereafter, the review panel, as  
24      entitled by law, issued a report in which it  
25      concluded that an inquiry committee should be

1       constituted to consider the evidence and  
2       determine whether Justice -- Associate Chief  
3       Justice Douglas should be removed from office.

4                       Third, at the same time as this  
5       committee -- your committee -- was created, I was  
6       appointed as independent counsel, and pursuant to  
7       that role, I and Ms. Crain conducted a totally  
8       fresh, exhaustive, and independent investigation  
9       and thus we interviewed 40 witnesses, some more  
10      than once. We obtained subpoenas and a Court  
11      Order to ensure that all relevant documentation  
12      and evidence was obtained.

13                     At no time was this investigation  
14      conducted for any other purpose than unearthing  
15      all relevant evidence to the possible  
16      allegations, whether in support or contradicting  
17      any possible allegations. And as a result of  
18      this elaborate investigation process and in  
19      accordance with the directions issued by the  
20      inquiry committee on May 19 and 24th, the four  
21      allegations that form the framework of the  
22      hearing that we'll begin hearing evidence on in  
23      mid-July were put forth by independent counsel  
24      pursuant to subsection 5(2).

25                     Now, as I noted in my submissions

1       forwarded to the committee on May 18th, 2002  
2       [sic], and as I understand this committee  
3       confirmed in its opening remarks on May 19th,  
4       2012, independent counsel is not a prosecutor,  
5       and while the four allegations have been put  
6       forward, which this hearing is designed to  
7       explore thoroughly and fairly, my job is first  
8       and foremost to present all the evidence I  
9       consider relevant to these allegations, whether  
10      it be in support of those or, by contrast,  
11      support of Justice Douglas's view that she did  
12      nothing wrong.

13                       This may indeed, likely will,  
14      require independent counsel to press certain  
15      witnesses forcefully, and indeed it's independent  
16      counsel's duty to do so in his impartial search  
17      for the truth. But no one should, as the  
18      evidence is unfolding, draw any conclusions as to  
19      independent counsel's views on any of the  
20      allegations or the witnesses being questioned.

21                       At the end of the evidentiary  
22      phase of this hearing, I will state what I  
23      believe the evidence has established in respect  
24      of each one of the four allegations at issue and  
25      make submissions on the question of Justice

1 Douglas's abilities to continue as a judge.

2                   Until that time, however, I, as  
3 independent counsel, -- and when I say "I", I  
4 mean, of course, Ms. Crain -- retain a completely  
5 open mind on these matters and intend to conduct  
6 myself in as impartial a manner as is humanly  
7 possible, guided only by the public interest as I  
8 conceive it and my responsibility to put before  
9 the panel all the evidence I consider it will  
10 need to discharge its function.

11                   It follows that, in my view, as  
12 independent counsel, this process has not been,  
13 is not, and will not become, so far as I can help  
14 it, either a witch hunt or a whitewash. It will  
15 be rigorously thorough but scrupulously fair.

16                   A word now on the sensitive  
17 nature of this investigation before I turn to the  
18 evidence itself.

19                   I want to say, then, a few words  
20 on the unique circumstances that have surrounded  
21 this matter. It's an understatement to say that  
22 this inquiry into the conduct of a judge has  
23 garnered more publicity than any other I'm aware  
24 of. Sadly, this may be due to the fact that some  
25 of the allegations compel us in some way to

1 consider matters that go to the very core of  
2 Justice Douglas's private life before she was a  
3 judge.

4 To my knowledge, these  
5 circumstances are unprecedented. Usually it's  
6 the public conduct of a judge, for example,  
7 alleged inappropriate comments made in open court  
8 that warrant the scrutiny of the CJC or similar  
9 bodies appointed to oversee the conduct of  
10 provincially-appointed judges.

11 And even when the conduct may not  
12 be widely known; for example, the failure to  
13 disclose relevant facts in the Therrien case,  
14 this conduct usually does not engage the most  
15 private sphere of a person's life as it does  
16 here. But while the allegations themselves will  
17 inevitably force an examination of matters which  
18 otherwise should have remained totally private,  
19 they are not brought forward from independent  
20 counsel's perspective from any improper purpose.

21 Following the elaborate  
22 investigative process I summarized very briefly,  
23 it's been determined that these allegations  
24 warranted a hearing to determine whether the  
25 facts disclosed could be said to impair Associate

1 Chief Douglas's ability to continue to sit as a  
2 judge.

3 In summary form, the allegations  
4 are the appropriateness of her alleged conduct  
5 with a client of the firm she and her husband  
6 then worked for or with.

7 Second, whether she was  
8 appropriately candid when she filled out her  
9 application -- her third application form for  
10 judicial office in 2004.

11 Third, whether the public  
12 availability of intimate pictures could impair  
13 her capacity to continue as a judge. And,  
14 fourth, the alleged impropriety of altering a  
15 relevant diary entry and alleged incorrect  
16 representations about the facts in the course of  
17 independent counsel's investigation.

18 Now, in the Therrien case that  
19 I've already referred to, we find standard of  
20 conduct expected of judges and I quote: We  
21 expect our judges to be almost super human in  
22 wisdom, propriety, and decorum and in humanity.  
23 There must be no other group in society which  
24 must fulfill this standard of public expectation  
25 and at the same time accept numerous constraints.

1     At any rate, there is no question that a certain  
2     loss of freedom accompanies the acceptance of an  
3     appointment to the judiciary.

4                     So while Justice Douglas's  
5     private life is not as such on trial, there is no  
6     denying that as a result of the unusual  
7     circumstances of this case, we will have to delve  
8     into some very private aspects of that life.

9                     In this regard, independent  
10    counsel has to date and will continue to  
11    endeavour to do everything possible to minimize  
12    the invasion of that privacy consistent, however,  
13    with the overriding public interest.

14                    And I say without in any way  
15    undermining the seriousness of this intrusion in  
16    the private sphere and note that this is not the  
17    only case where private matters ended up being  
18    debated in a judicial forum that the individuals  
19    concerned would have much preferred to be kept  
20    private, whether it be in other disciplinary  
21    proceedings or in family court or other cases.

22                    As fair as the judicial or  
23    quasi-judicial process is designed to be, it  
24    cannot guarantee that private matters will never  
25    have to be debated in the public forum, and you



1       made such similar remarks on your recent ruling  
2       on complaint number 2.

3                       Applying for judicial office  
4       necessarily entails a certain loss of privacy as,  
5       in fact, just reviewing the application form  
6       itself reveals. How far this intrusion can go is  
7       one of the questions that will have to be  
8       addressed at the end of this process.

9                       Unfortunately but unavoidably, it  
10      cannot be addressed without a full airing of all  
11      the relevant evidence so that the issues can be  
12      determined based on a full, fair, and complete  
13      record.

14                      However, I'll say this again,  
15      independent counsel, and I'm sure this committee,  
16      is not interested in Justice Douglas's private  
17      life for its own sake. But proper conduct,  
18      including candor, integrity, and the public image  
19      of justices or judges is central to an  
20      independent judiciary.

21                      The four allegations put forth in  
22      this case, while totally unproven, all engage  
23      these core values. This is what this hearing is  
24      about, these core values, and nothing else.

25                      Now, finally let me turn to the

1 evidence in very summary form in respect of each  
2 of the allegations.

3 Allegation number 1, I won't read  
4 it, but you know it's been posted. It concerns  
5 alleged sexual harassment by Ms. Douglas and  
6 Mr. King. The essence of that complaint is that  
7 Justice Douglas together with her husband  
8 sexually harassed Mr. Chapman. Her goal,  
9 allegedly, like her husband's, was to entice him  
10 to their home for a sexual encounter.

11 In his words -- that is  
12 Mr. Chapman's words -- "Mr. King and Lori Douglas  
13 had expected me to fulfill an obligation". We  
14 expect he'll testify that he felt pressured to go  
15 along because he felt he had to in order to get  
16 Mr. King to finish his divorce proceedings.

17 You'll hear that over the course  
18 of several months while he was acting for  
19 Mr. Chapman in a heated family law matter,  
20 Mr. King engaged in repeated discussions with  
21 Mr. Chapman, sent him graphic photos of a sexual  
22 nature of Justice Douglas, directed him to a  
23 website apparently focused on white couples who  
24 are interested in soliciting black sex partners,  
25 and sent him e-mails and voicemail messages in an

1 effort to persuade Mr. Chapman to enter into some  
2 sort of sexual relationship with Ms. Douglas as  
3 she then was.

4 You'll hear that Mr. King  
5 arranged two encounters at a local establishment  
6 between the three of them.

7 We do not expect Mr. King to deny  
8 the essential facts that I've just recounted, and  
9 indeed he was charged with and pleaded guilty to  
10 three counts of professional misconduct in  
11 proceedings arising out of those facts.

12 The key basis for Mr. Chapman's  
13 belief that Ms. Douglas was a willing participant  
14 in this scheme is her behavior -- alleged  
15 behavior on the occasion of the second encounter.  
16 We expect he'll say that she was flirting with  
17 him and touching him and that's as he walked to  
18 her car, she said, hope to see you at the house  
19 this weekend.

20 Justice Douglas for her part  
21 flatly, categorically, and unequivocally denies  
22 all of this. She says, not to put too fine a  
23 point on it, but Mr. Chapman is simply lying. We  
24 expect she'll testify that her husband committed  
25 an unimaginable betrayal of her by soliciting

1       Mr. Chapman to have sexual relations with her and  
2       that she had absolutely no knowledge of this  
3       conduct by her husband until Mr. King was  
4       effectively forced to tell her about it when  
5       their law firm received a complaint from  
6       Mr. Chapman on or about June 9th, 2003.

7                       We expect that although she'll  
8       admit that she did meet Mr. Chapman on two  
9       occasions, both were orchestrated by her husband  
10      without her knowledge or agreement, and although  
11      there is some possibly objective evidence that  
12      could support Mr. Chapman's allegations,  
13      ultimately this will come down to a form of  
14      credibility contest between Mr. Chapman's account  
15      on the one hand and Mr. -- and Associate Chief  
16      Justice Douglas or Lori Douglas at the time and  
17      Mr. King on the other.

18                      So therefore inevitably we'll  
19      have to explore -- explore the credibility of  
20      these witnesses in particular.

21                      Let me move on to the second  
22      allegation, which I'll summarize, again I won't  
23      read it. The text is for everyone to read, but  
24      it relates to the alleged failure to disclose  
25      relevant facts in Associate Chief Douglas's third

1 application for office, which resulted in her  
2 appointment ultimately May of 2005. The  
3 application, as I recall, was dated at December  
4 2004.

5 Just so that this is  
6 understood -- I know it's understood by the  
7 panel but by perhaps the broader audience -- by  
8 way of overview, the general process for  
9 applicants is as follows: Any lawyer in practice  
10 for more than ten years can apply to be a  
11 Superior Court judge by completing an application  
12 form.

13 The application is then  
14 considered by what's called an advisory committee  
15 struck by the office or constituted by the Office  
16 of the Commission For Federal Judicial Affairs.  
17 We refer to it in the vernacular as the JAC, the  
18 judicial advisory committee.

19 The JAC members in this case was  
20 the advisory committee on judicial appointments  
21 for the province of Manitoba appointed by the  
22 Minister of Justice. JAC then, once constituted,  
23 makes a recommendation ultimately to the Minister  
24 of Justice about the Applicant.

25 The JAC in that process prepares

1 a brief report setting out the reasons for its  
2 recommendation for the Minister. The Office of  
3 the Commissioner For Federal Judicial Affairs  
4 also carries out some screening. The JAC does  
5 some screening and calls people, but also the  
6 Minister's office may do some screening and get  
7 some information about the candidate.

8 Finally, the application and the  
9 JAC recommendation is forwarded to the Federal  
10 Minister of Justice himself or herself.

11 At that time, so we're talking  
12 about 2005, the Minister had a full-time staff  
13 person whose sole role was to advise the Minister  
14 with respect to appointments. That staff person  
15 and the Minister, as I said, could make further  
16 inquiries, and we expect that the evidence will  
17 be that some further inquiries may have been made  
18 by the staff person at that time.

19 An application, once considered  
20 by the judicial advisory committee, is good for  
21 two years following which it expires.

22 Now, back to the specific  
23 application form. This is the overall context of  
24 the application process, which starts, as I said,  
25 with the application form itself, and it includes

1 a question that is key to the second allegation  
2 or allegation number 2 and it's this: "Is there  
3 anything in your past or present which could  
4 reflect negatively on yourself or the judiciary  
5 and which should be disclosed?"

6 I'll refer to this as "the  
7 question". Now, at the time of the alleged  
8 sexual harassment, i.e., 2003, Ms. Douglas  
9 already had an active application pending.  
10 Really, her second application which turned out  
11 to be unsuccessful. It had not expired, though,  
12 until June 2004. Then, as I already said, in  
13 December 2004, she made her third and final  
14 application.

15 Now, quite apart from whether or  
16 not Associate Chief Justice Douglas was, as she  
17 maintains, an innocent victim of her husband's  
18 betrayal, I don't expect there to be any issue  
19 that by the time she applied for judicial office  
20 in December 2004 she knew a great deal about what  
21 had happened in 2003.

22 So when she's filing or she's  
23 preparing her application in December 2004, the  
24 events of 2003 and the alleged sexual harassment  
25 have taken place and she knows, we expect the

1 evidence to disclose, quite a lot about those  
2 events. And in particular, she knew at the time  
3 she's filling out -- filling out the application  
4 that a year prior, roughly, photos of a sexual  
5 nature of her, some of which could be seen as  
6 demeaning to women, were available on the  
7 internet.

8 Two, that over a two-month period  
9 the year before, her husband had tried to entice  
10 Mr. Chapman, then a firm client, into a sexual  
11 relationship with her by sending him photos of  
12 her and e-mails and arranging meetings.

13 Three, that Mr. King had paid  
14 Mr. Chapman \$25,000, which actually he paid for  
15 with money that Justice Douglas had loaned him  
16 and I think ultimately he repaid her. So he had  
17 paid -- Mr. King paid Mr. Chapman \$25,000 in  
18 exchange for a return of the materials,  
19 photographs, and e-mails and a confidentiality  
20 agreement, so-called.

21 And, four, that some of these  
22 facts were known in the Manitoba legal community,  
23 but I expect that you will, as the evidence  
24 unfolds -- that it may not be crystal clear  
25 exactly who knew what at particular junctures in



1       time and how much they knew about pictures or  
2       whether they were public and their specific  
3       nature or e-mails. So I expect the evidence will  
4       be somewhat varied about how much was actually  
5       known in the legal community.

6                       We also expect to lead evidence  
7       suggesting that during the course of her second  
8       application, so -- and particularly after the  
9       events of the summer of 2003, Justice Douglas  
10      became aware or at least considered that the  
11      Chapman issue, if I can call it that, and the  
12      photos could affect her prospects for  
13      appointment, and in particular, some entries in  
14      her diary might be interpreted that way so that  
15      she -- it might be thought as making a link  
16      between that affair and her prospects for a  
17      second application. That may be relevant later  
18      on when she decides to not refer to this matter  
19      in her third application.

20                     With this knowledge, and although  
21      we expect Justice Douglas to say that she had  
22      never viewed the pictures to this day, when she  
23      came to the question that I read to you before,  
24      she answered no. The issue will be whether it  
25      was proper or improper for Ms. Douglas to have

1       answered no in light of what she knew. Should  
2       she have at least disclosed something of the  
3       facts she knew relating to the 2003 events, or  
4       could she legitimately consider that these were  
5       not relevant or so well-known that they did not  
6       deserve mention?

7                       Now unlike many of the other  
8       questions on the so-called personal history  
9       form -- I've dubbed it the application form; I  
10      think the formal title is that -- for which there  
11      is a clear, objectively verifiable answer, for  
12      example, have you ever been guilty of a criminal  
13      or other offence, the question that I refer to  
14      requires the applicant to make three essentially  
15      subjective determinations. Namely, is there  
16      anything which could reflect negatively on  
17      yourself? Two, is there anything which could  
18      reflect negatively on the judiciary, and, three,  
19      if the answer to one or two is yes, then the  
20      final question is, which should be disclosed on  
21      the form?

22                      I expect, Chief Justice and  
23      members of the inquiry committee, that much time,  
24      at least in the final submissions, will be spent  
25      on what the standard is in answering a question

1       such as this, which may not have a purely  
2       objective standard against which one is judged.  
3       I take no position whatsoever on this, but  
4       clearly, on its reading, the question itself may  
5       be warranting some reflection and pause when we  
6       come to consider the final submissions.

7                       Now, at the time in question, the  
8       Office of the Commissioner For Federal Judicial  
9       Affairs had a publication compiled called Guide  
10      for Candidates, and it included, in respect of  
11      the disclosure obligation, the following:

12                     All who aspire to judicial office  
13      should be aware that their responsibilities would  
14      include not only the fair and just application of  
15      the law but the maintenance of the high  
16      reputation of the judiciary itself. Candidates  
17      should therefore be prepared to make a full  
18      disclosure of any matter that would reflect upon  
19      their ability to perform the functions of  
20      judicial office or upon the credibility and  
21      repute of the judiciary as a whole.

22                     Now I expect you'll hear from  
23      Justice Douglas that she answered no because she  
24      did nothing wrong. She was an innocent victim.  
25      In her view, the question does not ask about the

1 past or present wrongdoing by a family member,  
2 i.e., Mr. King.

3 I expect she'll say that such  
4 matters have nothing to do whatsoever with her  
5 competence as a prospective judge, and indeed, I  
6 make clear, I don't expect that the competence --  
7 the legal competence of Justice Douglas be at all  
8 in issue in this case. There may be issues about  
9 judgement, but in terms of competence there is no  
10 issue that independent counsel expects to be  
11 raised.

12 We also expect her to testify  
13 that in any event, the matter was resolved  
14 because of the settlement that I referred to that  
15 Mr. King entered into in 2003 and that the facts  
16 of her husband's wrongdoing were well-known in  
17 the legal community, and in particular by those  
18 who recommended her for appointment, so those  
19 would include the members of the JAC committee up  
20 to the ultimate appointing authority, the  
21 Minister.

22 In short, in her opinion, she had  
23 no obligation to answer the question otherwise  
24 than in the way that she did.

25 You'll hear from a number of

1 witnesses involved in the application process,  
2 including from the then Chief Justice of the  
3 Court of -- Manitoba Court of Queen's Bench, who  
4 met her before she filled out her third  
5 application. My recollection is that that was in  
6 the fall of 2003.

7                   We expect that you will hear that  
8 while several people involved in the application  
9 process knew about "something involving Jack  
10 King" there was, as I alluded to before, wide  
11 variations in respect of who knew what, and here  
12 I'm not -- I'm not making this comment simply in  
13 the legal community as a whole. I'm talking more  
14 about the people directly involved in the  
15 appointment process, including the Judicial  
16 Advisory Committee.

17                   Some may have known that there  
18 were photos on the internet, some others may not  
19 have known that. Some may have known something  
20 about the nature of the pictures, some disclaim  
21 any knowledge about the actual nature of the  
22 pictures.

23                   You will hear, I expect, that at  
24 least some members of the judicial advisory  
25 committee, with the knowledge that they had of

1       the situation, did not think Ms. Douglas should  
2       be a victim of her husband's misconduct, and they  
3       took that view. And I expect the evidence to be  
4       that this led to a rare procedure in the sense  
5       that the secretary to the committee, Ms. Margaret  
6       Rose Jamieson, was asked to interview or at least  
7       phone Ms. Douglas directly to ask her certain  
8       questions about the situation.

9                       It is independent counsel's  
10       understanding that direct contact with a  
11       candidate is rare in the interview  
12       process -- sorry, in the assessment of an  
13       application process.

14                      I expect the evidence will be  
15       that Ms. Douglas, indeed, was contacted by what  
16       I'll term the secretary of the Judicial Advisory  
17       Committee of Manitoba, and there was a telephone  
18       conversation. I expect that Justice Douglas will  
19       say that she answered all the questions that were  
20       put to her by Ms. Jamieson. It may not be clear,  
21       however, precisely what questions she was asked,  
22       at least from the perspective of the person  
23       phoning Ms. Douglas.

24                      And it may also not be clear what  
25       information, if any, arising from that telephone

1 conversation was passed on to the Minister's  
2 office, and in this regard, it must be understood  
3 that the practice at the time was to destroy  
4 after appointment or after the expiry of an  
5 application basically every paper record that had  
6 given rise to the appointment or the application.

7                   So we don't have, for example,  
8 and I don't expect that, therefore, for the  
9 committee to have the benefit of any written  
10 report beyond the application form itself that  
11 may have been forwarded to the Minister's office  
12 or sent to the Minister himself, who was at the  
13 time Minister Cutler, Minister of Justice.

14                   And in this regard, we expect  
15 that the Minister's evidence will be that he knew  
16 nothing about the Chapman situation or the  
17 allegations arising or made by Mr. Chapman in the  
18 situation with Mr. King, unless about any photos  
19 that might have been on the internet.

20                   So those, in a very summary form,  
21 are the -- is the evidence I expect to be led in  
22 respect of allegation number 2.

23                   The third allegation, this one is  
24 short, and I might as well read it. It says,  
25 Since 2002, photos of a sexual nature of ACJ

1 Douglas, including alterations, therefore, have  
2 been and continued to be available on the  
3 internet from time to time. These photos could  
4 be seen as inherently contrary to the image of  
5 the concept of integrity of the judiciary such  
6 that the confidence of individual appearing --  
7 individuals appearing before the judge or of the  
8 public in its justice system could be undermined.

9 Now, in August 2010, the facts  
10 underlying the Chapman complaint -- the alleged  
11 facts underlying the Chapman complaint, including  
12 the nature of the graphic photos, were widely  
13 broadcast by the CBC and received national  
14 attention.

15 At various points in time since  
16 2002, graphic photos of that nature have been  
17 available on the internet. The photos include  
18 images that might be considered demeaning to  
19 women, and some of these photos remain available  
20 readily by a simple search.

21 The third issue you'll have to  
22 determine then is whether these photos are  
23 inherently contrary to the image and concept of  
24 integrity of the judiciary, such that the  
25 confidence of individuals appearing before the



1 judge or the public in its justice system could  
2 be undermined.

3                   Given the position of ACJ  
4 Douglas, which is a leadership position in the  
5 Court, you may also have to consider what impact,  
6 if any, these images and facts have on her  
7 capacity to fulfill that role.

8                   Now, with respect to that third  
9 allegation and the issue it raises, we expect  
10 that Justice Douglas's position will be that she  
11 did not cause or consent to the publication of  
12 photos of her on the internet. Again, she is a  
13 victim of acts of her husband and later by  
14 others. We expect her position will be that  
15 finding her incapable because of actions of third  
16 parties in which she had no role to play  
17 whatsoever would be unconstitutional. It would  
18 bring the system of justice into disrepute.

19                   So let me move lastly to the  
20 fourth allegation. And, again, as it's  
21 relatively short, I might as well read it so that  
22 it's precise. The final allegation, as the  
23 committee knows, arose in the course of  
24 independent counsel's investigation, and it reads  
25 as follows: Upon being advised of the Chapman

1 complaint and initiation of an investigation by  
2 the CJC, Associate Chief Justice Douglas modified  
3 a personal diary that described an encounter with  
4 Mr. Chapman -- that allegedly described an  
5 encounter with Mr. Chapman, which she knew or  
6 ought to have known was relevant to the  
7 investigation. ACJ Douglas subsequently  
8 intentionally made incorrect representations to  
9 independent counsel about that modification.  
10 Those are the -- that is the allegation which has  
11 two components, as you know, Chief Justice.

12 Now, you'll hear, I expect, that  
13 after being advised of an investigation by the  
14 CJC into a sexual harassment complaint by  
15 Mr. Chapman, Associate Chief Justice modified a  
16 May 16, 2003 diary entry which possibly described  
17 her first encounter with Mr. Chapman by writing  
18 the word "boring" over the word "nice" so that  
19 the henceforth reads, boring time, rather than  
20 nice time. The exchange was made some time in  
21 September or October of 2010.

22 I expect that Associate Chief  
23 Justice Douglas will say that the expression  
24 "nice time" in the original entry was not  
25 intended to describe her encounter with

1     Mr. Chapman, and, secondly, that the change was  
2     never made to mislead, but it was made in anger  
3     essentially at the grief that Mr. Chapman had  
4     caused her by the time the complaint has been  
5     made to Judicial Council.

6                     The inquiry committee will have  
7     to decide whether this change in her diary was an  
8     attempt by ACJ Douglas to mislead by distancing  
9     herself from the contemporaneous description of  
10    the encounter with Mr. Chapman on May 16, 2003.

11                    You'll hear that in December  
12    2011, in response to a summons served in the  
13    cause -- in the course of this investigation,  
14    Justice Douglas produced her diary entry of May  
15    16, 2003 and that later in the course of our  
16    investigation on being questioned -- this was  
17    earlier this year -- by independent counsel about  
18    the apparent changed word, ACJ Douglas denied any  
19    recollection of making such a change to that  
20    entry. She went on to say that if she had  
21    changed the word, it was certainly not changed in  
22    the previous year or two. That I will refer to  
23    as the representation to independent counsel.

24                    Now, we expect that the evidence  
25    will show that at the time of the representation

1 I just referred to, Associate Chief Douglas knew  
2 that at least she had changed the word from nice  
3 to boring and also that she had done so in the  
4 course of preparing her response to the CJC  
5 following her receipt of the Chapman complaint in  
6 September 2010. I also expect Chief Justice  
7 Douglas -- Associate Chief Justice Douglas to  
8 admit that the representation was, strictly  
9 speaking, incorrect at the time it was made.

10 But she will say, I expect, that  
11 she found herself in very particular  
12 circumstances at a time of great stress and that  
13 accounts, at least in part, for the inaccurate  
14 statements that were made at that time -- at the  
15 time of the representation.

16 I also expect that ACJ Douglas  
17 will say that she took steps to correct her  
18 misstatements to independent counsel as soon as  
19 was practically feasible. This occurred roughly  
20 ten days after the original representation  
21 because, as ACJ Douglas will explain, I expect,  
22 she was on holidays abroad, and her counsel was  
23 not immediately available. She was also, at  
24 least for part of that time, out of the country.

25 So in the end in respect of

1       allegation number 4, the committee will have to  
2       assess whether the change in the diary and the  
3       incorrect representation that was made impair her  
4       ability to continue to sit as a judge, taking  
5       into consideration, of course, the explanations  
6       that I expect you will hear from Chief Justice  
7       Douglas -- Associate Chief Justice Douglas both  
8       for changing the original diary entry and for  
9       giving or making the representation which we  
10      say -- and I believe is not contested -- was  
11      inaccurate in respect of that change.

12                       That covers in the most succinct  
13      of fashion the evidence we expect you to hear in  
14      respect of each one of the allegations.

15                      Now, we will start, I believe,  
16      Chief Justice on April 16 -- sorry, July 16 with  
17      the evidence, and we expect some 14 witness will  
18      actually testify, starting with Mr. Chapman, for  
19      the reasons that I've already alluded to, and  
20      ending with Associate Chief Justice Douglas.

21                      We have provided a tentative  
22      schedule that will have to be revamped in light  
23      of your decision today, but we will do this as  
24      soon as practical, Chief Justice Fraser.

25                      We do hope to avoid calling a

1       number of witnesses by providing an Agreed  
2       Statement of Facts that could cover hopefully a  
3       number of uncontroversial points. We've provided  
4       a draft of this a week or two ago to Ms. Block,  
5       and she has been reviewing it and suggested some  
6       changes, which we will be reviewing. We  
7       understand, of course, that ultimately it is the  
8       committee's decision as to whether or not it is  
9       prepared to accept an Agreed Statement of Fact --  
10      but in the effort to make this process as  
11      efficient as possible, while being fair and  
12      thorough, we thought we would try that. So as  
13      soon as we can, at least as between counsel,  
14      Chief Justice, complete a draft Agreed Statement  
15      of Fact. And perhaps in light of your ruling  
16      today, we obviously will have to involve  
17      Mr. Galati possibly in that process. We will  
18      forward it to the -- to you or through  
19      Mr. Macintosh and see to what extent we might be  
20      able to tailor the process.

21                        So unless there are any questions  
22      from the -- from you, Chief Justice or the other  
23      members of the committee, those are the things I  
24      wanted to say by way of opening.

25                        THE CHAIR: Thank you,

1 Mr. Pratte. Any questions that the panel has of  
2 Mr. Pratte at this time? Thank you for your  
3 submissions. Ms. Block.

4 MS. BLOCK: Thank you, Chief  
5 Justice. May it please the committee, one thing  
6 I expect you'll learn about Lori Douglas is that  
7 she loves being a judge, she's really good at it  
8 and has worked incredibly hard to achieve this.  
9 As one senior judge put it to me, she has a gift  
10 for it. That's why judges and senior members of  
11 the Bar encouraged her to apply to the Bench, and  
12 she was encouraged to apply even after the bottom  
13 fell out of her world, when her husband, Jack  
14 King, betrayed her, violated her privacy,  
15 breached the most fundamental and intimate of  
16 marital trusts, exposing their sexual relations  
17 by conduct which is now notorious and not in  
18 dispute.

19 King, as my friend said, pleaded  
20 guilty to counts before the Law Society and was  
21 disciplined in a public proceeding.

22 What are now notorious facts came  
23 as a complete and devastating shock to Lori  
24 Douglas in June 2003 when her managing partner,  
25 Michael Sinclair, forced King to confess to her

1        what he'd done. This was for her, as independent  
2        counsel has stated, an unimaginable betrayal. It  
3        was completely beyond her contemplation that he  
4        would ever breach her trust like this or in any  
5        other way concerning their most intimate  
6        relations or, indeed, her marital accommodation  
7        of what he calls his "strange tastes".

8                        King was undergoing a mental  
9        breakdown. He now describes this bizarre and  
10       destructive behaviour as acts of grotesque self  
11       indulgence, as madness. It was a ridiculous  
12       fantasy that he would never have told his wife  
13       about because she would have shut it down and  
14       thrown him out.

15                      And when you get the JDB, you'll  
16       see at tab 164, the public apology King made  
17       after his discipline hearing for his disgraceful  
18       behaviour. In that, he acknowledges the great  
19       shame and great disgrace that he brought upon  
20       himself and the embarrassment to his family, to  
21       his friends, and to the Bar. He withdrew from  
22       the practice of law, underwent psychiatric  
23       treatment, and was off work for the better part  
24       of a year.

25                      And she didn't throw him out.



1       She worked hard to forgive him knowing he was ill  
2       for the sake of their young child and his  
3       children.

4                       You'll be hearing from Mr. King,  
5       and, for what it's worth, he is consumed with  
6       guilt and remorse for the harm he's caused to his  
7       innocent wife.

8                       In his public apology, he  
9       recognized that his deepest apology, which will  
10      never be enough, is owed to his wife. He said  
11      she did nothing wrong other than trust me when  
12      she should not have, and by privately indulging  
13      me in my strange tastes, all who know her and  
14      also all who know the facts and are possessed of  
15      a fair mind are aware she has done nothing wrong.

16                      He said despite her innocence, my  
17      actions have led to her being vilified and  
18      traduced by the malicious, the unscrupulous, and  
19      the uninformed. And he's right to say he can  
20      never apologize enough.

21                      But this case isn't about Jack  
22      King's misconduct. A wife is not responsible, is  
23      not to be tarred with the brush of her husband's  
24      misdeeds. That's a judgmental notion from  
25      another patriarchal era where women were defined

1       and measured by their husbands.

2                       The case before you is alleging  
3       misconduct by Lori Douglas. On the first count,  
4       it's not even conduct by Justice Douglas -- or  
5       Associate Chief Justice Douglas because the  
6       conduct alleged is by Lori Douglas in 2003 as a  
7       lawyer. And the specific conduct alleged against  
8       Ms. Douglas, as far as I can tell from the  
9       disclosure I've been given, is that she touched  
10      the arm and the knee of Alex Chapman on May 30,  
11      2003, a charge, in effect, of sexual assault.

12                     Now, the assertion of touching on  
13      May 30 or at any other time is a complete  
14      fabrication. Ms. Douglas, as she then was, had  
15      no interest in extramarital sexual encounters.  
16      She had no interest in her husband's client who  
17      appeared to happen upon them as they sat in the  
18      late afternoon on an open public patio. She  
19      never laid a finger on him, nor he on her, in the  
20      public space where he happened to turn up, a  
21      happening that was prearranged without her  
22      knowledge by King and Chapman.

23                     So in count number 1, in terms of  
24      the sexual harassment/assault by Ms. Douglas, we  
25      expect to show that that account is false.

1                   Count number 2, alleged failure  
2     to disclose in the application process, the  
3     question, as my friend has told you, is posed  
4     about the applicant's past or the applicant's  
5     present. Is there something in your past, your  
6     present, that reflects negatively on you or on  
7     the judiciary? Ms. Douglas answered no.

8                   She had certainly been horribly  
9     victimized by the wrongdoing of others. She, of  
10    course, in December 2004, had no knowledge of  
11    Chapman's future malicious and tortious assault  
12    on her privacy and Charter rights that was to  
13    come, nor did she know that the CBC being  
14    informed that Chapman had no right to distribute  
15    or disclose private photos and that Lori Douglas  
16    had never consented to those photos being  
17    distributed or disclosed, she could not have  
18    known that that very reputable media organization  
19    would say, we don't care about that and took the  
20    position that it was sufficient to say to Bill  
21    Gange, who was Jack King's lawyer, that we're  
22    printing the story, here's the e-mail for the CBC  
23    Ombudsman.

24                   Knowing -- December 2004, when  
25    she filled out the application, what Ms. Douglas

1       knew and believed was, one, she had been  
2       horribly, unimaginably victimized by her mentally  
3       unstable husband; second, he had retrieved the  
4       illegally distributed pictures; third, within  
5       days of him having to confess, they had been  
6       removed from the internet; and, fourth, the  
7       complaining client had been paid, and the matter  
8       was at an end.

9                       Indeed, Mr. Chapman's lawyer in  
10       proposing a monetary settlement instead of public  
11       disclosure, put it this way -- and when you get  
12       the JDB, you'll see tab 61, page 3, the last  
13       paragraph, Mr. Histed said that Chapman would  
14       accept the monetary settlement "as a sincere and  
15       complete apology. He would be prepared to  
16       forgive King. He would forget the matter and  
17       return the unsolicited documents that had fallen  
18       into his possession. If it ever came to light,  
19       he would advise the Law Society that he'd been  
20       fully compensated and that, in his opinion, King  
21       had been held adequately responsible and  
22       accountable for the incident. He would consider  
23       the matter closed and would not, within the  
24       limits of the law, cooperate with any further  
25       inquiries by anyone. Surely, the other path is

1 not one which is to be seriously considered."

2 The other path, the path that  
3 meant disclosure, was not contemplated as an  
4 acceptable alternative by Jack King. He settled  
5 for money on this basis.

6 In July of 2003, when King  
7 settled with Chapman, he received and destroyed  
8 the photos, and he had them removed from the  
9 internet.

10 There was still an issue for Lori  
11 Douglas to face. Would people tar her with the  
12 brush of her husband's misconduct, or would they  
13 understand that she did nothing wrong, that she  
14 had been wronged?

15 And, indeed, her firm stood  
16 behind her and recognized that she had been  
17 innocent, that her rights had been violated. Her  
18 opponents and colleagues at the Bar continued to  
19 treat her with respect. She continued to be well  
20 regarded by the Bench and received in their  
21 courtrooms. Her practice flourished as one of  
22 the top practitioners in her area.

23 So, no, she was not defined by  
24 her husband, she was not defined by her husband's  
25 wrongdoing. Her conduct was not at issue. She

1        did not see -- the wrongdoing that had been done  
2        to her was something in her past that reflected  
3        negatively on her, and the consequences of that  
4        wrongdoing by her husband had been, as far as she  
5        knew, completely resolved in 2003, in July.

6                        So unless you read the question  
7        as requiring the applicant to include a  
8        description of her victimization because, as a  
9        victim, especially if sex is involved, especially  
10       if you're a woman, you are damaged goods, you're  
11       tarnished; or unless you read the question as  
12       asking, especially a woman, if her husband or  
13       some other close family member has engaged from  
14       anti-social behaviour, you better disclose that  
15       because we're going to measure you based on the  
16       character of your husband or your son or your  
17       father. So unless you read the questions that  
18       way, then in December 2004, "no" was a proper  
19       answer.

20                        The other evidence I expect you  
21       will hear from Mr. Justice Freedman, who my  
22       friend is proposing to call, the head of the  
23       Judicial Appointments Committee at the time,  
24       sitting in the Court of Appeal, he knew her  
25       answer had been no. Everyone on the committee

1       had her application. I expect from the  
2       disclosure I have he will tell you he was aware  
3       of sexual photos having been put on the internet,  
4       of Jack King having tried to solicit sexual  
5       activity by others with his wife, and Justice  
6       Freedman had been visited by Chief Justice  
7       Monnin, who told him that, as Chief Justice, he'd  
8       been asked to support her application in 2003 and  
9       again in 2004, the Chief Justice sitting as a  
10      gatekeeper in this -- in this process, and Chief  
11      Justice Monnin had discussed the issue of King's  
12      conduct, including the posting of nude photos on  
13      the internet, with TDS, the law firm that had  
14      been approached by Chapman, initially shown the  
15      pictures.

16                       Because of the photos having been  
17      on the internet, Chief Justice Monnin was worried  
18      they could be misused or influence peddling or  
19      blackmail. So he told Associate Chief Justice  
20      Oliphant and Associate Chief Justice Mercier that  
21      he couldn't support her candidacy when he was  
22      first approached in 2003.

23                       Some months later, in 2004, he  
24      was asked again, and he told Associate Chief  
25      Justice Mercier the same thing. When Justice

1       Mercier asked, has your position changed, he said  
2       no.

3                       Then at the time of the third  
4       application in December 2004, when Chief Justice  
5       Monnin was asked again, he said now he could  
6       support it because enough time had gone by, but  
7       he went to see Justice Freedman and recited all  
8       this history to him, as he wanted Justice  
9       Freedman's committee to consider the issue.

10                      And I expect Chief Justice  
11       Monnin, from the disclosure I have, will tell you  
12       that he was satisfied that it would be aired and  
13       reviewed by the committee.

14                      And Justice Freedman, I expect,  
15       will tell you that it was, indeed, this  
16       extraordinary step that independent counsel has  
17       advised you of to have the lawyer who sits as the  
18       executive/secretary for all of the appointments  
19       across the country, Margaret Rose Jamieson, the  
20       rare occasion to have her call the candidate  
21       herself to verify the information the committee  
22       had. And Justice Freedman has a note of this  
23       instruction and that it was done, and it was to  
24       verify that what -- they knew that there had been  
25       sexual photos, that they'd been posted on the



1 internet, that they'd been removed, and that  
2 Ms. Douglas considered the matter had been  
3 resolved.

4 And I expect Associate Chief  
5 Justice Douglas will tell you that in that call  
6 she got from Margaret Rose Jamieson, she was also  
7 asked if she had continued to be treated with  
8 respect by her colleagues, by her firm, by the  
9 Bench, and she had been, to her great relief and  
10 gratification.

11 The committee wanted the  
12 information verified because they wanted the  
13 information given to the Minister. Justice  
14 Freedman will be very clear about this, I expect,  
15 and his view was, if the Minister wanted more  
16 detail, he could send it back to the committee  
17 for further diligence, or he had his own roots to  
18 do his own further diligence.

19 So I expect Justice Freedman will  
20 tell you that he was not surprised by "no" on the  
21 application, that it did not cause him to believe  
22 that the candidate was answering falsely. In  
23 fact, it was consistent with the committee's  
24 understanding that she considered the matter  
25 resolved. In her view, it was a dead issue.

1                   If no had been seen as deceitful,  
2     the recommendation would never have gone from the  
3     committee to the Minister. Instead it was  
4     understood that she was not her husband, it would  
5     be grossly unfair and improper to blame her for  
6     his conduct, and that she believed the misconduct  
7     had been resolved, the pictures returned and  
8     destroyed, and off the internet.

9                   Let me turn to count 3. The  
10    pictures have been available from time to time on  
11    the internet. You will hear that Ms. Douglas  
12    never placed any pictures on the internet, never  
13    consented to it, never knew about it until King  
14    was forced to tell her and down they came.  
15    Nothing will show that any pictures were on the  
16    internet after June '03 until Chapman wants them  
17    to see the light of day in 2010. And even then,  
18    they don't show up on the internet until after  
19    King seeks costs from Chapman in connection with  
20    the dismissal of Chapman's 2010 lawsuit against  
21    King for \$10 million. Associate Chief Justice  
22    Douglas gave no consent to the release of these  
23    intensely private photos to Chapman or his  
24    associates or to any posting.

25                   But, of course, because Chapman

1       cheated and did not relinquish the materials he  
2       was paid to send back and because he lied about  
3       not having made them available to others, he and  
4       his associates still had them in 2010.

5                       I expect you will hear that in  
6       2003, Chapman had been sending stuff to his  
7       friends to be used in case anything happened to  
8       him. His then spokesman, Sean Sam, before they  
9       had a falling out, had retained the material in  
10      2003 allegedly because Chapman was fearful for  
11      his life. Chapman forwarded materials to another  
12      friend, Dale Lambkin in 2003, and had him  
13      download the website to be kept for safekeeping.  
14      Sam sent it to other colleagues to protect Alex.  
15      These were very incriminating pictures, so  
16      Chapman had to keep them.

17                     Chapman himself took snapshots of  
18      material sent to him by King, material he was  
19      supposed to delete in 2003, and Chapman passed it  
20      to friends like Lambkin.

21                     They obtained the material in  
22      2003 and retained it on his behalf, and Chapman  
23      gave materials to Marjorie Hickey in 2011,  
24      Ms. Hickey being the counsel for the review panel  
25      who did the initial investigation, and he gave

1 materials to the CBC in 2010. And he admits  
2 restoring deleted files from his own computer,  
3 and he had these friends keeping materials to  
4 make sure he was "protected".

5 Now, Ms. Hickey, the counsel for  
6 the review panel, asked him directly, who  
7 provided the CJC with CDs with photos? Here's  
8 her note of the response: Mr. Chapman indicated  
9 that he had "a lot of friends who have supported  
10 him, who gave -- who have copies of these  
11 pictures. Some are in Trinidad. These people  
12 are all standing behind me."

13 She goes on, when his computers  
14 were seized, he said "there were people out there  
15 standing behind me. My system was seized from  
16 me, and I was totally helpless in my position.  
17 My friends are going to stand behind me. They're  
18 going to ensure I'm not put in a position where  
19 I'm helpless or can be intimidated."

20 Now, the disks anonymously appear  
21 at the CJC's offices after the Manitoba Queen's  
22 Bench has issued an injunction and ordered  
23 Chapman to disgorge the materials and seek them  
24 back from all the people he placed them with.

25 And as you've already heard, the

1 deal struck in 2003 to settle Chapman's complaint  
2 was based on the return of the material and that  
3 Chapman would forget the matter, it would be  
4 closed. Surely, the other path is not one which  
5 is to be seriously considered.

6                   You will hear from Mr. Histed and  
7 see that when he delivered the materials in a  
8 sealed envelope, he said he was delivering an  
9 envelop "containing all materials provided by my  
10 client that originated from your client" -- this  
11 is Jack King -- "or websites that my client was  
12 directed to by your client, Jack King."

13                   Mr. Histed said the provision of  
14 these materials was "in performance of a  
15 settlement agreement."

16                   And he went on to say that he had  
17 stressed to Chapman the importance of  
18 "permanently eradicating any trace of these  
19 documents, namely, the materials given by King or  
20 the materials from the website that King directed  
21 him to."

22                   Chapman personally certified that  
23 he'd never forwarded any e-mails or photos to  
24 anyone else. After all, the whole point was to  
25 retrieve all of the material so it could not see

1       the light of day. It was all a lie. Chapman  
2       intended to and arranged to, quote, protect  
3       himself and to ensure he would have access to the  
4       returned materials whenever he wanted. So much  
5       for the permanent eradication of all the  
6       materials he was given by King or directed to on  
7       the website.

8                       But even then, even after they're  
9       anonymously given after the injunction to the  
10      CJC -- which merely accepted them, no questions  
11      asked -- even then they are not on the internet.  
12      That happens later in the fall of 2010.

13                     Chapman sued TDS, the law firm,  
14      for \$50 million; King for \$10 million; and now,  
15      for the first time, Associate Chief Justice  
16      Douglas for 7 million for harassment. King  
17      obtained a dismissal of the suit. It was an  
18      abusive process; he was awarded costs.

19                     I will likely ask you to hear  
20      from Bill Gange, King's lawyer, who says that  
21      after obtaining the dismissal with costs on  
22      behalf of King, he received a call from Chapman's  
23      then lawyer, who warned that if King sought and  
24      pursued the costs, quote, bad things could  
25      happen. I expect Mr. Gange will tell you he was

1 told what would happen if all of a sudden there  
2 were photos on a European internet site and word  
3 gets out that there are pictures of Lori on the  
4 internet. Right now there are no photographs.  
5 Alex can assure you no pictures will be on the  
6 internet if this is all resolved.

7 A week after the cost motion was  
8 argued, Chapman's lawyer called to let Gange know  
9 that a supporter of Chapman had dropped off an  
10 envelope indicating the photos had been posted on  
11 a European internet site.

12 At the end of the case, I will  
13 ask you to draw the inference that the posting of  
14 these photos on the internet in 2010 was  
15 malicious, was intended to inflict harm on  
16 Associate Chief Justice Douglas and there, but  
17 for fortune, goes any judge with the hands of a  
18 disgruntled litigant who doesn't like what you've  
19 done in your courtroom on his case or for some  
20 other malicious reason can cause widespread  
21 reputational damage to the judge on the internet.  
22 It doesn't have to be true. It can be  
23 photoshopped or, as Mr. Pieuk has encouraged,  
24 nude photos of the Prime Minister, get those  
25 published. It doesn't matter that it isn't him,

1 his face is on the nude, and you can't possibly  
2 reach all the people who see it to say, hey,  
3 that's not real.

4 So the issue you'll be addressing  
5 in count 3 is if something is done maliciously  
6 and you are a victim of it, having never  
7 consented to the release of the material, should  
8 that malicious conduct deprive you of your  
9 constitutionally secure tenure, a tenure which is  
10 a fundamental element of the independence of the  
11 judiciary?

12 Judges have sex both before and  
13 after their appointment to the Bench. This sex  
14 was before. And all of us are entitled to,  
15 according to the Supreme Court of Canada, engage  
16 in sexual activity which it described as, quote,  
17 a positive source of human expression,  
18 fulfillment and pleasure, and they said  
19 consensual sex does not jeopardize our tolerant  
20 society.

21 The Court tells us that those of  
22 us who are protected by the Charter, which is all  
23 of us, are entitled under 2(b) and 7 of the  
24 Charter to have intensively private materials  
25 depicting our sexual activity for personal use.



1     It's connected, according to the Court, to our  
2     self-fulfillment and our self-actualization.  
3     It's a Charter value.

4                     My friend says regrettably there  
5     will be incursions into the private life and  
6     private matters, intimate matters. It should not  
7     matter that this wasn't Ms. Douglas's thing, that  
8     she was occasionally indulging her husband's  
9     strange taste, consensually. He liked to take  
10    pictures during sex. They were never used by her  
11    or viewed by her or printed out or reviewed. He  
12    took the pictures for his personal fulfillment,  
13    never to be viewed by anyone else. But when the  
14    violation came to light, they were all destroyed,  
15    but for the dishonesty and malice against the  
16    judge that you will hear about in this sorry  
17    case.

18                    And if what we're talking about  
19    in count 3 is really talking about the sex  
20    itself, the judicial application form had better  
21    change its questions because applicants have to  
22    know that there is permitted lawful sex and there  
23    is impermissible lawful sex. Although depicting  
24    any pictures taken during sex will be graphic, no  
25    one wants to see those, and I have had no

1 disclosure of any evidence intended to be called  
2 saying that wearing sexual gear, play-acting,  
3 oral sex or clicking a camera during sex will be  
4 found to be impermissible activity in and of  
5 itself. And I will be urging this committee that  
6 it has to operate on objective, not subjective,  
7 evidence. We're not here on count 3 conducting a  
8 Supreme Court of Canada reference on community  
9 standards. If we were, there would be months of  
10 expert evidence and social science evidence.

11 That's not what you are here to do and that is  
12 not the case the judge has been given notice of.

13 Now, if in count 3 we're talking  
14 about parading one's sexual activity publicly,  
15 the evidence will show Associate Chief Justice  
16 Douglas has never and still does not consent, as  
17 this committee well knows, to the distribution  
18 and viewing of any such pictures. It is a  
19 humiliating personal affront to her. The  
20 evidence will show that her conduct would have  
21 kept all such images private and when discovered  
22 that they were not and had not been, she insisted  
23 they be retrieved and destroyed permanently.

24 But if this count is,  
25 notwithstanding every effort she has made and

1 will continue to make to prevent distribution and  
2 viewing of any of these images by anyone, if it's  
3 a count that says despite the fact that through  
4 the wrongdoing of others, the images may be seen  
5 by those who search them out and, therefore,  
6 she's not fit to be a judge because the public  
7 interest works to destroy the career and life of  
8 an innocent person so that the administration of  
9 justice could be upheld, then there is a serious  
10 problem with this count.

11 Let me just give you one example.  
12 If a woman were raped and if the perpetrator's  
13 despicable colleagues took videos of it, or the  
14 perpetrator himself, and set it loose on the  
15 internet, and that woman is appointed to the  
16 Bench, and the video resurfaces, would the system  
17 of justice ever say she had to be removed from  
18 the Bench? To say yes to that question, that it  
19 is in the public interest to penalize the victim  
20 for wrongdoing done to her, is the antithesis of  
21 the public interest. It is the antithesis of  
22 what the administration of justice stands for if  
23 that is what this count leads to.

24 And on this count, what the  
25 public interest requires, the committee will be

1       judged by history. The public interest you have  
2       to consider is not some one-dimensional notion of  
3       the public's right to know through a process like  
4       this which can inflict, as it is doing, even more  
5       harm on an innocent victim.

6                       It is our case to show you Lori  
7       Douglas, both before she was appointed and since  
8       2010, has suffered grievously at the hands of a  
9       betrayer and a wrongdoer motivated by malice.  
10      The wrong done to her, the distribution of  
11      intimate, most private photos is unpleasant to  
12      view. No one with any decency should view them.  
13      Frequenters to Dark Cavern are not shocked. They  
14      go there because that's their thing. So to  
15      consumers of pornography, photos of women naked,  
16      graphic, performing sex acts are just  
17      objectifications of women. That's why most of us  
18      don't consume pornography, because we're not  
19      interested in seeing people exploited. But to  
20      say the public interest means you have to fire  
21      the exploited woman, the one betrayed and abused  
22      at the hands of unscrupulous men, cannot be  
23      right.

24                      To validate the count is to aid  
25      the wrongdoers and further harm the victim and

1       that cannot give the public confidence in its  
2       justice system, and we will be urging you at the  
3       end of this case not to make such a fatal misstep  
4       in the articulation of what is in the public  
5       interest in the administration of justice. It's  
6       not the victim who is a disgrace. It's a system  
7       of justice that could further harm the victim  
8       that would be a disgrace.

9                       Let me turn to the fourth count.  
10       It's related in a way. The process has inflicted  
11       tremendous harm on Lori Douglas. It has taken  
12       enormous courage to withstand this process,  
13       considering the intimate nature of the subject  
14       matter, the painful facts of the betrayal and  
15       wrongdoing against her, and the isolation imposed  
16       by colleagues with the power to marginalize and  
17       diminish her. The fourth count is a consequence  
18       of that condition.

19                      You will learn that Lori Douglas  
20       keeps a gardening diary. It's 10 years in one  
21       page. She notes when the plants come out, when  
22       the birds come back the same day every year for  
23       10 years, and she makes a brief note of some  
24       events. She makes it the next morning. And on  
25       May 17th, she noted an impression of May 16th,

1       the word "nice" after a usual stressful workday  
2       to share a drink on a public patio on a Friday  
3       afternoon with her husband. When she was  
4       instructing counsel to try and figure out dates  
5       from seven years earlier, she looked in her diary  
6       and saw a reference to this event on May 16th,  
7       sharing a drink as a nice time, and she saw Alex  
8       Chapman's name in the same line and in a fit of  
9       anger and a fit of pique, she wrote over "nice"  
10      with "boring."

11                       As my friend has indicated, she  
12      will tell you she was not intending to mislead,  
13      she did not view this as evidence, she never  
14      expected to be in this inquiry. She was  
15      interviewed by telephone remotely in February of  
16      2012 and was not forthright in her response of a  
17      change in the gardening diary. She was in no  
18      condition to be interviewed that day and at the  
19      earliest practical opportunity, she asked to  
20      correct her response. She then gave evidence  
21      under oath to the independent counsel, providing  
22      medical evidence which shows the state she was  
23      in. She has since intensified her medical  
24      treatment and has summoned all the courage she  
25      has to face this proceeding.

1                   She started out, as many women  
2     who work incredibly hard to achieve in their  
3     professions and care for their family would, by  
4     taking this all on her shoulders. She would put  
5     on a brave front and handle it. But as I will  
6     ask you to hear in camera, the physical, mental  
7     and emotional toll caused her to hit a low point  
8     in February of this year as she felt abandoned by  
9     everything she believed in. You will not hear  
10    from anyone who has dealt with her over her  
11    career, either as a practising lawyer or as a  
12    sitting judge, that she has anything other than a  
13    stellar reputation for honesty and integrity.  
14    And although her appearance as a witness will  
15    understandably be gruelling, it is my expectation  
16    you will yourselves understand why that is the  
17    case when you hear from her at the end of this  
18    hearing.

19                   It is no secret that on behalf of  
20    our client, I have opposed these proceedings as  
21    vigorously as I know how. People can differ in  
22    their judgments about fairness, and those in  
23    authority have differed and rejected my pleas  
24    thus far, so here we are. And I seek what I hope  
25    the committee also seeks is a proceeding that, as

1 far as possible, will protect Associate Chief  
2 Justice's dignity, privacy, and her rights to a  
3 fair proceeding that the law requires. Much lies  
4 in the balance that is important to all judges  
5 now and to come. Thank you for your attention.

6 THE CHAIR: Thank you so much,  
7 Ms. Block. Any questions that the panel has of  
8 Ms. Block?

9 Now, that concludes the opening  
10 statements and I'm just thinking in terms of  
11 where we go now. It's obviously lunchtime, but  
12 do we have any other matters that we wish to  
13 discuss? We have the documents that were  
14 provided already. We marked them as exhibits.  
15 Sorry, that's been done.

16 MR. JOHNSON: I have a question  
17 that I'd like to ask the committee if it's --  
18 you're agreeable. I'm a member of the public.

19 THE CHAIR: I'm sorry, who are  
20 you?

21 MR. JOHNSON: I'm a member of the  
22 public. It's a public inquiry. What I'd like to  
23 do is --

24 THE CHAIR: I'm sorry, you're a  
25 member of the public. Who are you? What is your



1 name?

2 MR. JOHNSON: My name is Lyle  
3 Johnson.

4 THE CHAIR: I'm sorry?

5 MR. JOHNSON: Johnson, Lyle  
6 Johnson.

7 THE CHAIR: Lyle Johnson. Yes?

8 MR. JOHNSON: What I'd like to do  
9 is have Ms. Block give us a detailed explanation  
10 of what she means by the patriarchy.

11 THE CHAIR: I can't hear what  
12 you're saying.

13 MR. JOHNSON: I'd like a detailed  
14 explanation of what she meant by the patriarchy.

15 THE CHAIR: We're actually in the  
16 process of an inquiry, we have a structure to it,  
17 and the structure doesn't include having  
18 individuals come up to the mic to ask individual  
19 lawyers, whether the lawyers or members of the  
20 committee, to answer questions. So I'm so sorry,  
21 but I'm going to have to ask you to please be  
22 seated.

23 MR. JOHNSON: I apologize for  
24 offending the committee.

25 THE CHAIR: Thank you. Mr. Pieuk?

1                   MR. PIEUK: I would like to  
2     comment on something Ms. Block said in reference  
3     to my name.

4                   THE CHAIR: Well, I'm sorry, but  
5     we're not -- we are in the middle -- I've just  
6     explained to Mr. Johnson --

7                   MR. PIEUK: Thank you.

8                   THE CHAIR: -- that we're in the  
9     middle of an inquiry and we do have a process to  
10    follow and it doesn't include comments. I  
11    believe I mentioned the first day we started this  
12    inquiry that we were not holding an open-mic  
13    session where people come up and make comments  
14    that they choose to, whether on point or off  
15    point, but thank you in any event.

16                   I believe that that concludes the  
17    matters. I'm just going to check with my panel  
18    members to see if there is anything else we need  
19    to deal with. One moment, please.

20                   Counsel, I just wanted to ask the  
21    three of you if there is anything else that you  
22    wish to raise today? Actually, it's Ms. Block  
23    and Mr. Pratte.

24                   MR. PRATTE: No, thank you, Chief  
25    Justice.

1                   THE CHAIR: All right, thank you  
2       so much. Then this matter is adjourned until  
3       July 16th at 10:00 a.m. and we'll see you at that  
4       time. Thank you.

5       --- Whereupon the hearing was adjourned at 12:55  
6       p.m. to be resumed on Wednesday, July 16, 2012

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